



November 3, 2010

Phil Isenberg, Chair  
Members of the Council  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

Re: Draft Notice of Preparation for Delta Plan

Dear Chairman Isenberg and Council Members:

The Northern California Water Association (NCWA), Regional Water Authority (RWA), Glenn-Colusa Irrigation District (GCID), and the Placer County Water Agency (PCWA), appreciate the opportunity to provide comments and feedback on the Delta Stewardship Council's (Council) October 18, 2010 draft Notice of Preparation (NOP) for the Environmental Impact Report (EIR) that will be prepared to support adoption of the Delta Plan. The Delta Reform Act charged the Council to prepare a plan for the Delta (Delta Plan) that furthers the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Our initial comments on the draft NOP concern 1) the proposed geographic scope of the plan and 2) the improper attempt to list responsible agencies.

*The NOP Should Not Describe a Planning Area That Extends Beyond the Delta*

The NOP describes two planning areas: ðthe primary planning area is defined as the statutory Delta and Suisun Marshð and ðthe secondary planning area is defined by the

watershed of the Delta and the geographical areas of California that include water agencies that provide water exported from the Delta.ö (NOP p. 9.)

Neither the NOP nor the Delta Plan should propose a geographic scope beyond the immediate Delta. The Delta Plan is described in the Delta Reform Act. There, the Delta Plan is focused on the statutory Delta, with the application outside of the Delta recognized in three Water Code sections:

85302(b). The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable water use.

85307(a). The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

Thus, the Delta Plan is limited to the Delta except to the extent that it identifies the projects specifically described in these sections. While the Delta Reform Act contemplates these very specific activities outside the Delta, it clearly does not contemplate a Delta Plan that covers nearly the entire State of California as suggested by the NOP. At a minimum, the NOP should make clear that the Delta Plan is limited to the Delta and will extend beyond the Delta only for the limited purposes contained in these Water Code sections. Expanding the jurisdictional scope and actions of the Delta Plan beyond the Delta, except as otherwise required by statute, will make the Delta Plan unwieldy and will likely dilute its effectiveness in providing solutions for the Delta ó the primary focus of the Delta Reform Act.

#### *The Draft NOP Improperly Identifies Local Agencies as Responsible Agencies*

The NOP lists hundreds of local agencies located entirely outside of the Delta as responsible agencies under the California Environmental Quality Act (CEQA). (See e.g., NOP p. 27-31.) This is improper under CEQA. The NOP defines öResponsible Agencyö as a public agency, other than a lead agency, that has the responsibility for implementing or approving the Delta Plan, or aspects, or portions of the Delta Plan.

This definition, however, is somewhat different than CEQA, which defines a responsible agency to include all public agencies other than the Lead Agency which have discretionary approval power over the project. (Public Resources Code §21069.) A responsible agency only has authority over öthat part of the project which the responsible agency would be called on to carry out or approve.ö (State CEQA Guidelines §§15041(b), 15042.)

Given the definition of Responsible Agency as provided in CEQA and its Guidelines, it appears that identification of many local agencies located wholly outside of the Delta is improper. Because the Delta Plan should focus on the Delta only, agencies outside the Delta will not carry out or approve the Delta Plan and do not have discretionary approval power over the Delta Plan. The draft NOP therefore fails to conform to CEQA and the CEQA Guidelines because it fails to identify parts of the proposed Delta Plan that the local agencies identified as responsible agencies would carry out or approve.

*Conclusion*

We appreciate the Council's consideration of public comments on the draft NOP and we encourage the Council to focus its future energies on a Delta Plan that will provide sustainable solutions for the Delta.

Sincerely yours,

Northern California Water Association



David Guy  
President

Regional Water Authority



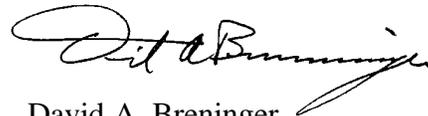
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